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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,584	12/12/2003	Erich J. Schlosser	217 P 954	1733
7590	02/14/2006		EXAMINER	
Matthew J. Gryzlo, Esq. WALLENSTEIN WAGNER & ROCKEY, LTD. 311 South Wacker, 53rd Floor Chicago, IL 60606-6622				COCKS, JOSIAH C
		ART UNIT	PAPER NUMBER	3749

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/735,584	SCHLOSSER ET AL.
	Examiner Josiah Cocks	Art Unit 3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 December 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-31 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 12 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/29/04 &amp; 7/6/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings filed 12/12/2003 are accepted by the examiner.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the solid energy receptor" in line 2. There is insufficient antecedent basis for this limitation in the claim. Neither this claim nor claim 11 on which it is dependent has previously introduced a sold energy receptor portion. Claim 11 did introduce an energy receptor surface but it is not clear if the recitation in claim 12 is referring this surface. As best can be determined, and for the purpose of an examination on the merits, it appears applicant intended to first introduce that the energy receptor surface includes a solid energy receptor portion. Correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,158,330 to Andress (“Andress”) in view of U.S. Patent No. 2,253,834 to Volks (“Volks”).

Andress discloses in the specification and Figs. 1-3 an invention in the same field of endeavor as applicant’s invention and similar to that described in applicant’s claims 1-31. In particular, Andress shows a removable cooking grid/grate for a barbecue grill that includes a cooking surface made of upper surface (12) of a plurality of cooking members (17) and a lower surface (14) that includes a solid energy receptor portion (troughs 13, see Fig. 3) having a thickness that extends a distance below the cooking surface. The cooking members of the upper surface are considered to be depending from the solid energy receptor portion. Pluralities of openings (16) are arranged between the cooking members and no openings extend through the solid energy receptor portion (note Fig. 3. showing no openings in the troughs 13). Andress

further shows that a upper sloped grease control structure configured on the upper surface of the receptor portion (note slope of sides of members 17) and a lower grease control portion that includes an apex located below the cooking surface (see apexes formed between troughs 18, Fig. 2a).

In regard to claims 2, 10, and 16-20, the cooking grate of Andress clearly has a mass notes that the type of material employed or amount of material has an effect on the weight of the grate (see col. 2, lines 35-39). Further, Andress suggests that the size and shape of the openings are variable (see col. 1, lines 39-41 and col. 2, lines 30-32). To have adjusted the mass distribution of the grate or the size of the openings would be simply a matter of optimizing the mass of the grate and slot sizes of Andress through routine experimentation and re not regarded to patentably distinguish applicant's invention. See MPEP 2144.04(II)(A).

Andress clearly teaches that the cooking grate is included in a barbecue grill assembly that has a cooking chamber and a heating source underneath the grate (see col. 1, lines 12-15) but does not expressly provide that the heating source is a gas burner and that the cooking grate is adjacent the gas burner such that no structure is located between the gas burner and the solid energy receptor portion of the cooking grate.

Volks teaches a barbecue grill assembly with a cooking grate in the same field of endeavor as both applicant's invention and Andress. In Volks, the barbecue grill expressly includes a gas burner (any or all of 10) within a cooking chamber. The cooking grate (31) of Volks is of similar construction and arrangement to that of Andress and is shown provided adjacent the gas burners such that no structure is between the cooking grate and gas burners (see Fig. 4).

Therefore, in regard to claims 1-31, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the heat source provided underneath the cooking grate of Andress would be a gas burner arranged adjacent the cooking grate as taught in Volks in order to enable flames from the gas burner to impinge on the cooking grid in order to provide heat to the food cooked thereon while also providing that any grease dripping from the grid is directed to appropriate without dropping on the burner to thereby minimize smoking and unpleasant smells (see Volks, page 2, col. 1, lines 1-19 and col. 1, line 72 through col. 2, line 4).

***Conclusion***

7. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 3,418,921 (Fautz), 4,930,491 (Purello), 5,259,299 (Ferraro), 5,911,812 (Stanek et al), 6,260,478 (Harneit), and foreign documents DE 100 33 294 and CA 2 280 312 are cited to further show the state of the art concerning cooking grate structure in barbecue grill assemblies.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is

(571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
February 9, 2006

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749